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8 WELLS FARGO BANK, N.A., ALSO KNOWN AS WACHOVIA MORTGAGE, A DIVISION
9 OF WELLS FARGO BANK, N.A., AND FORMERLY KNOWN AS WACHOVIA
10 MORTGAGE, FSB, FORMERLY KNOWN AS WORLD SAVINGS BANK, FSB,
11 ITS ASSIGNS AND/OR SUCCESSORS IN INTEREST

11 UNITED STATES BANKRUPTCY COURT

12 NORTHERN DISTRICT OF CALIFORNIA

13 In re:

14 JOSEPH ANTHONY TAORMINA,

15 TINA MARIE TAORMINA

CASE NO.: 08-47550-EJ-13

CHAPTER: 13

R.S. NO.: EAT-926

16
17 MOTION FOR RELIEF FROM THE
18 AUTOMATIC STAY

19 DATE: July 30, 2010

20 TIME: 10:00 am

21 PLACE: U.S. Bankruptcy Court
22 Courtroom 215, Floor 2nd,
23 1300 Clay Street
24 Oakland, CA

20 Debtors.

25 WELLS FARGO BANK, N.A. ALSO KNOWN AS WACHOVIA MORTGAGE

26 A DIVISION OF WELLS FARGO BANK N.A., AND FORMERLY KNOWN AS

1 WACHOVIA MORTGAGE, FSB, FORMERLY KNOWN AS WORLD SAVINGS BANK, FSB
2 hereby moves the court for an Order Terminating Automatic Stay for cause pursuant to
3 *11 U.S.C. Section 362(d)(1)* on the grounds hereafter set forth:

4 1. On December 18, 2008, the Debtors JOSEPH ANTHONY TAORMINA and TINA
5 MARIE TAORMINA commenced this voluntary Chapter 13 case in the United States Bankruptcy
6 Court for the Northern District of California, Oakland Division, Case No. 08-47550-EJ-13.
7 MARTHA G. BRONITSKY is the duly appointed, qualified and acting Chapter 13 Trustee. An
8 order confirming the Debtors' Chapter 13 Plan was entered on June 11, 2009.

9
10 2. The court has subject matter jurisdiction over this Motion for Relief from the Automatic
11 Stay under the provisions of *28 U.S.C. Section 157(b)* and *11 U.S.C. Section 362*. Venue in this court is
12 proper under the provisions of *28 U.S.C. Sections 1408* and *1409*.

13
14 3. The Debtors' estate includes real property commonly known as **5419 GERONIMO**
15 **COURT, ANTIOCH, CA 94531-9030** and legally described as follows:

16 ALL THAT CERTAIN REAL PROPERTY SITUATED IN THE CITY OF
17 ANTIOCH,COUNTY OF CONTRA COSTA,STATE OF CALIFORNIA,DESCRIBED AS
FOLLOWS:

18 LOT 376,AS SHOWN ON THE MAP OF SUBDIVISION 8122,FILED JUNE 9,1998,MAP
19 BOOK 400,PAGE 31,CONTRA COSTA COUNTY RECORDS.

20 EXCEPTING THEREFROM:

21 AN UNDIVIDED 1/2 INTEREST IN AND TO ALL GAS,OIL,ASPHALTUM OR OTHER
22 HYDROCARBONS AND MINERALS IN AND UNDER THE LAND HEREINABOVE
23 DESCRIBED WITH THE RIGHT OF INGRESS AND EGRESS THERETO AND
24 THEREFROM,FRO THE PURPOSE OF THE EXTRACTION THEREOF,WITH THE
25 RIGHT TO INSTALL,MAINTAIN AND OPERATE PIPE LINES,AND OTHER
26 IMPROVEMENTS FOR THE PURPOSE OF EXTRACTING SAID SUBSTANCES OR
ANY OF THEM,SAID SUBSTANCES AND RIGHTS HAVING BEEN HERETOFORE
CONVEYED BY DEED RECORDED AUGUST 6,1963,IN BOOK 4423,PAGES 154,167
AND 170,OFFICIAL RECORDS.

27 ALL RIGHTS IN OR TO THE SURFACE OF SAID LAND AND OR TO THE LAND
28 BELOW THE SURFACE OF THE PROPERTY TO A DEPTH OF 500 FEET MEASURED

1 VERTICALLY FROM THE SURFACE OF THE PROPERTY TO A DEPTH OF 500 FEET
2 MEASURED VERTICALLY FROM THE SURFACE OF SAID LAND HAVE BEEN
3 ELIMINATED BY QUITCLAIM RECORDED OCTOBER 19,1989,IN BOOK 15407,PAGE
4 277,OFFICIAL RECORDS.

5 APN NO:055-450-022

6 4. On or about August 08, 2006, Debtors JOSEPH ANTHONY TAORMINA and TINA
7 MARIE TAORMINA executed a Note in the original sum of \$520,000.00 in favor of WORLD
8 SAVINGS BANK, FSB. The Note is secured by a first priority Deed of Trust against said real
9 property recorded on August 15, 2006 as Instrument No. 2006-0258033-00 in the Office of the
10 County Recorder of CONTRA COSTA County, CA. In or about September 2006, World Savings
11 Bank, FSB was acquired by Wachovia Mortgage, FSB. Subsequently, in or about October 2008,
12 Wachovia Mortgage, FSB merged into Wells Fargo Bank, N.A.

13 5. The original loan amount was payable with interest at the initial rate of 7.19% per
14 annum in monthly principal and interest installments of \$1,794.63 each, commencing October 15,
15 2006 and continuing thereafter each calendar month through September 15, 2036 at which time the
16 entire unpaid principal balance plus accrued interest shall be due and payable. The interest rate and
17 monthly payment are subject to periodic adjustments as specified in the Note. The current monthly
18 payment is \$2,829.88.
19

20 6. Movant has not yet commenced any foreclosure proceedings against the real property.
21

22 7. The Debtors have materially defaulted in their obligation by failing to make regular
23 post-petition monthly mortgage installments totaling \$11,319.52 from March 15, 2010 through and
24 including May 15, 2010. Another post-petition installment of \$2,829.88 has come due on June 15,
25 2010 and another post petition installment of \$2,829.88 will become due on July 15, 2010. In
26 addition, Movant has incurred attorney fees and costs totaling \$800.00 to prosecute this relief from
27
28

1 stay motion. These legal expenses are recoverable as additional obligations payable under the ARM
2 NOTE and Deed of Trust.

3
4 8. The Debtors' material default constitutes cause to terminate the automatic stay under
5 *11 U.S.C. Section 362(d)(1)* so that Movant can progress enforcement of its contractual default
6 remedies to foreclose upon and recover possession of the real property.

7
8 WHEREFORE, movant prays for an Order as follows:

9
10 1. For an Order Granting Relief from the Automatic Stay to allow moving party to enforce
11 its state law foreclosure remedies against the real property described above and to allow the successful
12 bidder to recover possession of said real property in accordance with applicable state laws.

13
14 2. That the Order Granting Relief from the Automatic Stay be binding and effective
15 notwithstanding any conversion of this case to a case under any Chapter of *Title 11* of the *United States*
16 *Code* without further notice, hearing or court order.

17
18 3. That the Order Granting Relief from the Automatic Stay be deemed effective and
19 enforceable immediately upon its entry with no stay on its enforcement as prescribed by *Rule 4001(a)(3)*
20 of the *Federal Rules of Bankruptcy Procedure*.

21
22 4. For such other relief as the court deems proper.

23
24 BARRETT DAFFIN FRAPPIER TREDER
25 & WEISS, LLP

26
27 Dated: July 7, 2010

28 By: /s/ MARISOL A NAGATA
MARISOL A NAGATA
Attorney for Movant